IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

Bail Appl..No. 4835 of 2007(E)

CC.53/2005 of J.M.F.C.,CHALAKUDY

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PETITIONER/ACCUSED

E.T.RAGHAVAN, S/O. THAMPIKKUTTY,
IDAPARAMBIL HOUSE,VELLANCHIRA DESOM,
CHALAKUDY.

BY ADV. SRI.N.KRISHNANKUTTY PILLAI

RESPONDENTS: COMPLAINANTS

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1. STATE OF KERALA, REPRESENTED BY
THE GOVERNMENT PLEADER,
AG'S OFFICE HIGH COURT OF KERALA,
ERNAKULAM.

2. A.R.SUNIL KU,AR, S/O. A.S.RAMAN,
AMBAKKATTU VEEDU,
KOORKKANCHERY, THRISSUR.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.4835 of 2007

Dated this the 10th day of August 2007

O R D E R

Application for anticipatory bail. The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. Cognizance has been taken. The petitioner has not appeared before the learned Magistrate. Consequently, the learned Magistrate has issued coercive processes against the petitioner. He finds a warrant of arrest issued by the learned Magistrate chasing him.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence earlier before the learned Magistrate is not wilful and is due to reasons beyond his control. The petitioner is willing to appear before the learned Magistrate and seek regular bail. But the case against him having been transferred to the list of long pending cases, the petitioner apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He, therefore, prays that directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

3. After the decision in Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends

arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate.

5. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1) KLT 339].

6.In the result, this bail application is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007